

MINUTES
(Subject to approval by the Committee)
Federal Lands Interim Committee
Thursday, October 09, 2014
9:00 A.M.
Center for Advanced Energy Studies in Idaho Falls
Idaho Falls, Idaho

The meeting was called to order by Cochairman Senator Chuck Winder at 9:00 a.m. Other members of the Committee present were Cochairman Representative Lawrence Denney, Senator John Tippets, and Representative Mat Erpelding. Members absent and excused were Senator Bart Davis, Senator Sheryl Nuxoll, Senator Michelle Stennett, Representative Mike Moyle and Representative Stephen Hartgen. LSO staff present was Mike Nugent.

Other persons present were Amanda Gearhart, University of Idaho; Jon Ochi; Jerry Jayne; Bob Geddes, Idaho Farm Bureau; Dino Lowrey; Jerry Scheid; Lary Larson; Coby Tigert; Dr. Steve Larsen; Kathy Rinaldi, Greater Yellowstone Coalition; Muriel Roberts, Idaho Conservation League; Cheryl Cox; Eric Barnarel; Kevin Landon; Wyatt Larsen; Mark Koby; Tom and Molly Brinkerhoff; Barbara B. Brown; Jana Jones; E. Lyon Johnson; Edward Johnson Sr.; Representative Jeff Thompson; Chris Hunt, Trout Unlimited; Nyla Rossicna, Public Lands Coalition; Pat Brown, Department of Lands; Diane Weaver and Kevin Landen.

Mr. Mike Nugent, LSO staff, gave background information on the committee's charge. He explained that the purpose of the committee is to give the Legislature more time to study the subject that is too complex to complete during the regular legislative session. This committee is a two-year committee that ceases to exist after November 30, 2014. In order to continue beyond that date the Legislature will have to approve another concurrent resolution or enact a statute. The committee was formed pursuant to the adoption of [HCR21](#) and [HCR22](#) during the 2013 Legislature. He also explained that all information from past meetings is available on the LSO website at: www.legislature.idaho.gov

Senator Winder explained that this is going to be a long-term process that will probably require a recommendation for some type of land commission to pursue the opportunities that are out there regarding federal land transfers. He noted that a lot of other states are interested in the issue as well and that it is a bipartisan issue across the West. **Senator Winder** noted that it is not easy and, if the state got all of the federal land back, there would still be endangered species and EPA issues to deal with. He added that the committee wanted to reach out to communities that are impacted by these federal regulations and hear concerns and stories about how they are impacted.

Written testimony was also accepted by the committee and that is posted at: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/lands.html>.

Mr. Jon Ochi was the first person to speak. **Mr. Ochi** said he is against the transfer of federal lands to the state and to do so could cause catastrophic results. **Mr. Ochi** referred to the 1868 Fort Bridger Treaty between the Shoshone-Bannock Tribes and the United States in which hunting and fishing privileges were granted to the members of the tribe in their usual and accustomed gathering places. **Mr. Ochi** referred to a 1972 Idaho Supreme Court case where the state cited a tribal member for illegally fishing on the Yankee Fork and the court sided with the tribes, and Justice McQuade cited treaty rights as the reason. **Mr. Ochi** said the Supremacy Clause of the United States Constitution would make the state takeover of federal lands problematic. He said the tribes do not want to give up their treaty rights and confiscation of these lands would be illegal and costly.

Mr. Jerry Jayne was the next person to speak and said he was strongly opposed to the transfer of ownership or control of our public land to the state of Idaho for the following reasons:

- The public land belongs to the whole country, not just Idaho. It's the people's land; it doesn't belong to the politicians or the special interests to which they pander. Such efforts to gain state ownership amount to attempted theft.
- Management of the public land is expensive; therefore, much of it would probably have to be privatized. The historical record of federal land grants to the states shows that this has often been the case. "Guest opinion: Proposed 'transfer' of public lands is prelude to privatization," by Martin Nie, *Billings Gazette*. 9/4/14.

As to the idea of gaining more state control over management of our public lands, **Mr. Jayne** thinks that local interests and politicians already have enough influence on public land management, as much or more than the rest of us do. In **Mr. Jayne's** opinion, the Forest Service and the BLM certainly make mistakes and do bad things for the land, but it is citizen input, including appeals and litigation, that has often improved the decision-making process resulting in better public land management. He said that if Idaho politicians and local interests get more control over public land management, the public land would suffer more damage than today and citizens would have little say.

Mr. Jayne said in the earlier days of America, federal policy and laws encouraged disposal of the public land. Many people and probably most politicians did expect and hope that the federal land would be rapidly disposed of. He noted that a great deal of it was disposed of until the middle of the 20th century through legislation such as the Homestead Act, the Stone and Timber Act, the Desert Land Act and the Carey Act. He added that this was aided by lots of money and politics and in some cases fraud.

Mr. Jayne went on to say that by the mid-century it became obvious to conservation-minded citizens and Congress that the federal government should hang onto the remaining public land: that it had worth for watershed protection, wildlife habitat, outdoor recreation, and other natural values. Congress passed several national park bills: the Wilderness Act (1964), the Wild and Scenic River Act (1968), the National Environmental Policy Act (1970), and other landmark environmental laws. In 1976, supported by numerous citizens, Idahoans among them, Congress passed the Federal Land Planning Management Act (FLPMA), also known as the BLM's "organic act." It repealed most of the existing public domain disposal laws and, according to **Mr. Jayne**, it made it quite clear that national intent was generally to retain the public land.

Mr. Jayne said [HCR22](#) was adopted by the 2013 Idaho Legislature on a largely party line vote. It demanded that the federal government turn over ownership and control of the national forest and BLM land in Idaho with certain exceptions: "the Legislature of the State of Idaho demands that the federal government imminently transfer title to all of the public land within Idaho directly to the State of Idaho."

Mr. Jayne went on to say that [HCR21](#) accompanied [HCR22](#) and was adopted nearly unanimously. It authorized the establishment of the Federal Lands Interim Committee to study and report on how the larceny might be accomplished. He state that the committee is going through the motions of holding public hearings.

Mr. Jayne explained that the Idaho Attorney General has said that such transfer has no legal basis, so Representative Lawrence Denney and other legislators pushing this proposed transfer have used state funding to hire outside legal advice, which will hopefully give them the answer they want. He added that this has resulted in spending over \$60,000 of Idaho taxpayer money so far.

Mr. Jayne said the outside lawyer they have hired is William Myers III, a former lobbyist for extraction industries seeking easier access to the public land and who, as solicitor for the United States Department of Interior, worked to weaken public land regulations. After President George W. Bush nominated him to the 9th Circuit Court of Appeals, over 140 national, state and local organizations opposed his confirmation. Mr. Myers later withdrew his nomination.

Mr. Jayne said in the past century there have been several attempts by local interests to gain control over or outright ownership of the public lands. In the 1940s, right after World War II, there was a concerted effort by cattle barons and other special interests in grabbing ownership or control of the public land. Fortunately, their legislation was exposed and publicized by that great historian and conservationist Bernard DeVoto, who referred to the rowdy congressional hearings in Wyoming as "Congressman Barrett's Wild West Show."

Mr. Jayne said during the period 1968-1972 there was the Public Land Law Review Commission, the report of which was spun by various anti-environmental congressmen like Wayne Aspinall to push for public land giveaway legislation. In Idaho during this period, the Samuelson Administration set up a junior version, called the Idaho Commission on Federal Land Laws, which according to **Mr. Jayne** was made up of public land exploiters with the obvious goal of grabbing as much control of public lands in the state as possible.

Mr. Jayne said that during the Reagan-Watt-Crowell years of the 1980s, there was the "Sagebrush Rebellion" in Idaho and other western states that was made up of a collection of special interests wanting more control over public lands and with fewer restrictions on their particular desired uses of those lands.

Mr. Jayne stated that in 1996 the Idaho Land Board appointed the Idaho Federal Lands Task Force (FLTF) to start thinking of ways to gain more state and local control over the federal land in Idaho. In 1998, the FLTF reported back that pilot projects should be identified on federal lands in Idaho and, in 1999, appointed a working group to identify areas for these projects. The FLTF working group identified five pilot project areas encompassing some 10.8 million acres of federal land in Idaho. The FLTF submitted a report called "Breaking the Gridlock: Federal Lands Pilot Projects in Idaho." In **Mr. Jayne's** opinion, this was little slicker than an outright demand for ownership of public land, but still a bad idea. The Idaho Office of the Wilderness Society, joined by nine other conservation groups, sent a substantial letter of comments to the Land Board opposing any of the proposed pilot projects.

Mr. Jayne said the premise about "gridlock" seems to mean the FLTF thought that the Forest Service was not selling enough timber, grazing enough cows, or allowing enough off-road vehicle abuse. The FLTF ignored the fact that national forest timber harvest nationwide and in Idaho during the 1970s and 1980s was unsustainable and also that many citizens have come to realize that national forests are not tree farms. But the FLTF and many Idaho politicians thought that our national forests should be managed like private tree farms.

Mr. Jayne said today, in 2014, the Idaho Legislature seems to have that same mind-set as a whole. He urged the legislators to prove him wrong and reject this whole idea of transfer of public lands or their control to the state of Idaho.

Mr. Dino Lowrey said that the idea to transfer federal lands to the state of Idaho reminds him of a movie entitled "Dumb and Dumber." He said that movie was a comedy, but this proposal falls squarely between the movie genres of tragedy and farce: a tragedy because of all the taxpayer time and money wasted in this ill thought-out effort, and a farce because this is just an obvious and very transparent ploy to garner publicity for political reasons by polarizing the general public on what is an absurd and clearly unconstitutional proposal.

Mr. Lowrey referred to the book *These American Lands* (Zaslowsky and Watkins), which cost \$15.00 ten years ago. He said that if former Speaker Lawrence Denney and Senator Chuck Winder had bothered to read this book, it would have saved the taxpayers and the state of Idaho \$60,985. The book opens with the introduction describing the visual difference between private and public (i.e., federal) lands.

Mr. Lowrey said that public land is different from private land; we don't get to do just what we like with it, and for good reason. He said public land is owned by all Americans and "belongs to that portion of the continent that will never be subdivided and subject to impulse." He said that

"impulse" is the operative word, because impulse, in our culture, translates to the need to maximize profits as quickly as possible. He added that the BLM and the Forest Service are not-for-profit organizations and all Americans, including Idahoans, benefit from this arrangement.

Mr. Lowrey said a representative from the BLM calculated that average fire suppression costs over a three year period, 2011 to 2013 (those years were not considered to be bad fire years), came to \$32.7 million and this figure did not include Forest Service or tribal costs nor very expensive air-support costs. He said adding in those other costs brings the total closer to \$50 million. He added that in a state that cannot fund its schools adequately, has a deteriorating infrastructure, and depends on federal dollars to shore up barley farmers that have lost their crops or are in need of cheap irrigation water, where will that state come up with the money for fire suppression? In his opinion, the plan is to sell or lease our public lands to the highest bidder, consume and/or extract every resource available while leaving a blighted landscape for future generations of Idahoans and Americans.

Mr. Lowrey explained that the BLM and the Forest Service have mandates to manage the land for multiple use, to balance resource extraction with recreation. He said to look at the BLM or the Forest Service websites to see all that they do with shrinking budgets. He said they deal with diverse issues such as grazing rights, mineral leases, threatened and endangered species, campground garbage collection, noxious weeds and invasive species. **Mr. Lowrey** said he does not envy our public servants.

Mr. Lowrey said in conclusion, the proposal to transfer federal land to the state is, besides being unconstitutional, totally unacceptable to the American people. He stated that perpetuation, protection and shared multiple use of all publicly held resources begins with the recognition that public land is not an anomaly in American life but an integral part of it. The idea of federal land management and protection along with the creation of National Parks ranks among the few thoroughly American contributions to world culture. To paraphrase Ken Burns (of PBS fame), **Mr. Lowrey** said, the creation of these parks and federally protected lands was, as his special was titled, "America's Best Idea." **Mr. Lowrey** said, "Please don't give Idaho a black eye for making us known for having one of America's worst ideas."

Mr. Jerry Scheid, a retired rancher and native Idahoan, born and raised in the little town of Jerome in southern Idaho, said he has run both sheep and cattle during his career and has not only grazed livestock on federal land but hunted, fished, hiked and generally enjoyed these lands. He said he opposes the efforts of the Idaho Legislature to transfer 33 million acres of federal land to the state.

Mr. Scheid cited four reasons for his opposition:

- Where does the state expect to find the money to properly manage and care for this land? Idaho seems to find it extremely difficult to fund something as important as education, yet our Legislature wants to take on an enormous land management obligation that, with one untimely forest fire, could run into the tens of millions of dollars.
- The state's constitution requires that we use our lands to obtain maximum return for education. Yet the state Land Board has repeatedly been taken to court for not awarding leases to the highest bidder. You may recall that the Western Watersheds Project has taken the Land Board to court seven times, and won each time, in order to pay the state double the lease rate being paid by a local rancher. It took the courts to force the state to put the interests of public education over someone's private interest. Unfortunately, our state has a sorry record of allowing private, economic and political interests to trump the greater good.
- [HCR22](#) would allow a committee to determine what lands could be sold off to the highest bidder. Once in the hands of private owners, the land would no longer be available for the public to enjoy for hunting, fishing, and general recreation. Equally important, neither wildlife nor streams recognize state boundaries. Here in eastern Idaho, with our proximity to Yellowstone, wildlife needs large blocks of land across several states (Idaho, Wyoming and Montana) for habitat and

migration routes. They should be managed as an ecosystem, not a political division like state boundaries.

- Why is this committee using \$61,000 taxpayer dollars to hire private lawyers to oppose the opinion of our Attorney General who is elected and paid by those same taxpayers? Chairman Denney is quoted as saying, "Getting good sound advice is well worth it." I would be more impressed with Mr. Denney's comments if it was his personal money paying the bill rather than mine as a taxpayer.

Mr. Scheid concluded that the federal lands belong to all of the people of the United States, not just the citizens of Idaho.

Mr. Lary Larson is an attorney in Idaho Falls and is generally opposed the transfer of the public lands to the state. He said that if ranchers and forestry people are frustrated with the management of the federal lands or with laws or regulations regarding the lands, there are ways both legally and through current systems in place to solve those problems. **Mr. Larson** said this is a good opportunity for all stakeholders to address the land management. **Mr. Larson** said if the public lands are transferred to the state, he would like to see three things occur:

- These acquired lands should be managed and governed by a nonpartisan agency.
- No lands that are transferred that have great value to the public for recreation could have their nature of use changed.
- No environmental degradation could occur on these transferred lands.

Ms. Kathy Rinaldi, Greater Yellowstone Coalition (GYC) and a Teton County commissioner, said the GYC appreciates the opportunity to provide comments on the proposal of the state of Idaho to acquire and control public lands that are currently managed by the federal government. She stated that for 30 years the GYC has worked to protect the lands, waters and wildlife of the Greater Yellowstone Ecosystem (GYE). She added that whether it is Yellowstone or Grand Teton National Park or the millions of acres of national forests and BLM lands that surround these parks, public lands support the wildlife, clean water, wilderness and incredible recreation that make the Greater Yellowstone so special.

She said GYC has many concerns with the concept of Idaho taking control of federal public lands. One concern is the economic impacts of Idaho assuming the responsibility of nearly 28 million acres of federal land will quickly outstrip Idaho's capacity to provide sound management and essential services. She noted that Idaho has struggled to provide necessary funding to our state parks and, with the addition of millions of more acres to manage, there is great concern that the state will not be able to effectively manage for the multiple uses currently allowed on federal lands and would then be forced to sell newly acquired lands to private interests. **Ms. Rinaldi** went on to say that this potential loss of public access and the negative impacts on Idaho's hunting and angling heritage should not be underestimated; it will also have detrimental and long-term impacts on Idaho and local communities by compromising the strong recreation industry that eastern Idaho enjoys. Finally, she stated that the loss of thousands of federal jobs will have significant impacts on local communities such as St. Anthony/Island Park, Idaho Falls, Teton Basin, Pocatello and Soda Springs.

She added that the GYC has long cooperated with federal agencies to educate the public and conserve the natural resources that maintain the integrity and function of the GYE for present and future generations. Currently, GYC is a partner on the Island Park Sustainable Fire Community, which is committed to helping Island Park homeowners prepare for wildfires by creating defensible space around properties, providing information on fire safety, and improving access for fire vehicles and evacuation. This partnership with federal, state and local governments is not unique and demonstrates the value of various stakeholders working together toward common goals. She said that if the state were to take responsibility of federal lands, many of these partnerships and the resources would be compromised in the short term and may take years to reestablish, leaving local communities like Island Park without much needed resources.

Finally, and most concerning to GYC, is the focus on short-term economic gains of timber harvesting without considering many of the ecological values that Idahoans and Americans cherish. Non-market resources such as clean water, clean air and native biodiversity are benefits a healthy ecosystem provides to human kind and are priceless when compared to a simple profit-maximization approach of resource extraction. **Ms. Rinaldi** emphasized that the investments that GYC has made over 30 years to maintain ecosystem health and protect special places such as the Upper Snake, Centennial Mountains or the Caribou Highlands will be at risk if those lands are sold to the highest bidder and urged the Federal Lands Interim Committee to comprehensively examine the values of our public lands, not just for Idahoans but for all Americans. She added that the GYC requests a thorough, unbiased economic analysis of the costs of acquiring federal lands in Idaho.

Ms. Rinaldi went on to say that in her almost six years as a Teton County commissioner, she has learned firsthand the challenges confronting commissioners from day one that they take office. It takes an amazing amount of effort, and there are often many barriers, for counties to plan strategically for the long-term. She said too often decisions are reactive and don't consider long-term impacts. She is afraid this idea of transferring the federal lands to the state has too many pitfalls and unintended consequences that will amount to short-term gain for long-term loss. She said this idea is not fiscally conservative and would cripple rural communities like Teton that are dependent on our national forests for freedom, access and prosperity. She agreed that there are legitimate frustrations with land management and said she would like to see those frustrations addressed, but this radical idea does nothing to solve the real problem on our forests. In fact, she stated, if Idaho were to take control of federal lands, it would entail the largest expansion on state government and taxes since statehood. In her opinion, in addition to privatizing lands to make ends meet, many fees such as grazing, firefighting and recreation user fees would also increase dramatically. She said that the communities, the federal government and the state need to work as neighbors with everyone at the table to address real problems such as implementing a plan to secure consistent and fair PILT and SRS payments and, most importantly, to ensure that whatever is done leaves behind a better world for our children and the next generation.

Ms. Rinaldi explained that she and her husband are also owners in a backcountry retail shop in Driggs and have a backcountry ski guiding business that is permitted through the Caribou-Targhee National Forest. The business is dependent on our national forest, as many are in Teton and Fremont counties. These lands contribute to our business, our community's economy and our quality of life and any attack on them, such as this, is an attack on our way of life. As someone who lived through a real estate boom, I've seen enough trophy homes, private hunt clubs and exclusive fishing streams. These are public lands and they need to stay that way. She feels good knowing that her boys get to grow up in place that has clean water and wild rivers, big mountains, quiet streets and wildlife that is not in a zoo. She is also proud to be able to share this lifestyle with her nieces and nephews who live in areas dominated by traffic, concrete and indoor play. Finally, she loves our state's motto, *esto perpetua*. She said that motto needs to be kept in mind, because it's not just about us today, but for forever.

Ms. Muriel Roberts, Idaho Conservation League, said as an Idahoan she cherishes the ability she enjoys to hike, camp and fish on our public lands from the hills outside Pocatello by the White Cloud Mountains. She said although she is an Idahoan, she is very much aware that these lands do not belong to her or other citizens of Idaho but rather they belong to the citizens of the United States. She said our federal government manages these lands for us all. She said the Idaho Legislature's idea that the state should try to take over these public federal lands is a very bad, unconstitutional idea. She said there are many reasons why this committee should never have been started. She said taxpayers should be incensed at the huge expense of the committee traveling around the state and at their hiring a lawyer when the Attorney General already said it was an unconstitutional plan.

Ms. Roberts said, far from making money for Idaho, even if it is possible to take back lands Idaho never owned, the expense of managing them would end up costing so much money that they would be sold off. Then they would not be public lands.

Dr. Steve Larsen said he is against the state taking over the federal lands. **Dr. Larsen** said that Idaho's Admission Act renounced title to the public lands. He added that the state Land Board and the Department of Lands have not been the greatest managers of state lands. He cited certain endowments that have been reduced by \$1.2 million and the controversy over the cottage site leasing issue as examples of where state land managers have not done the best job for the public. **Dr. Larsen** also discussed the costs of fire suppression, should the state be liable for all the costs.

Mr. Chris Hunt, Trout Unlimited, said his organization is opposed to the state taking over the public lands. He said that public lands and access to them are vital to sportsmen of this state. He said there is an estimated \$49 million in state tax revenues attributable to sportsmen having access to public lands to hunt and fish. He said the state taking over the public lands would be economically irresponsible.

Kevin Landen spoke in favor of the state taking over the public lands. He is a small recreational miner and he cannot pursue his hobby because of the Environmental Protection Agency restrictions. He also said the wolf being reintroduced into Idaho has had some unintended consequences. The wolves that have been reintroduced to Idaho are bigger and meaner than the old wolf packs and they are preying on livestock and big game herds. He indicated that federal wildlife managers and environmental agency personnel are closing lands off to recreation that state control might otherwise allow.

The public hearing adjourned at 10:05 a.m.